

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENITO DRAKE,

Petitioner,

v.

CASE NO. 07-CV-12094
HONORABLE VICTORIA A. ROBERTS

MARY BERGHUIS,

Respondent.

**ORDER GRANTING PETITIONER'S MOTION TO VOLUNTARILY DISMISS
WITHOUT PREJUDICE THE PETITION FOR WRIT OF HABEAS CORPUS**

This matter is before the Court on Petitioner's motion to voluntarily dismiss his petition for writ of habeas corpus so that he may fully exhaust his state court remedies. Petitioner states that he has a motion for relief from judgment pending in the state trial court (filed on January 28, 2008) which contains additional claims that he may wish to pursue in a federal habeas action if he is unsuccessful in obtaining relief in the Michigan courts. The Court previously denied Petitioner's motion to hold the case in abeyance pending exhaustion of additional, unidentified claims. Given that Petitioner has a matter pending in state court and given that the time during which his habeas case has been pending before this Court is equitably tolled, *see Johnson v. Warren*, 344 F. Supp. 2d 1081, 1088-89 (E.D. Mich. 2004), the Court finds that dismissal of the present petition is appropriate.

Accordingly,

IT IS ORDERED that Petitioner's motion for voluntary dismissal is **GRANTED** and the petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**. This case is closed. Should Petitioner wish to seek federal habeas relief following the exhaustion of his state court remedies, he must file a new habeas petition in federal court within the time remaining on the one-year statute of limitations.

S/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: April 9, 2008

The undersigned certifies that a copy of this document was served on the attorneys of record and pro se petitioner by electronic means or U.S. Mail on April 9, 2008.

s/Carol A. Pinegar

Deputy Clerk